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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,910	03/01/2004	Rainer Kropke	104035.274389	1406
826	7590	11/03/2005	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			LAMM, MARINA	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/790,910

Applicant(s)

KROPKE ET AL.

Examiner

Marina Lamm

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/28/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgment is made of the amendment and translation of the foreign priority document, both filed 7/28/05. Claims pending are 1-28. Claims 1, 5, 6, 9-11, 13, 14, 18, 19, 22 and 23 have been amended. Claims 25-28 are new.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Argembeaux et al. (EP 1074239, translation) in view of Dallal et al. (US 5,059,414), supplied by the Applicant.

Argembeaux et al. teach cosmetic hair care compositions in the form of emulsions and solutions, containing complexing agents such as imino disuccinic acid or salts thereof (e.g. tetrasodium salt). See p. 12 of the translation, [0033]; p. 15, [0042]-[0043]; p. 24, [0067]. Examples 4-6 of Argembeaux et al. show compositions containing 0.2, 0.3 and 0.8% of imido (sic!) disuccinic acid, Na salt. See p. 25. The compositions of Argembeaux et al. may contain UV absorbers to protect the hair or the skin from UV radiation as well as alcohols, polyols, vitamins and other cosmetic ingredients. See p. 18, [0051]-[0052]; p. 21, [0057]. While teaching polyols as possible additives, Argembeaux et al. do not explicitly teach the claimed combination of imino disuccinic acid or salts thereof with polyols or the specific polyols of the instant claims 9, 10, 22 and 23. However, Dallal et al. teach using polyols such as glycerin,

Art Unit: 1616

propylene glycol, polyethylene glycol, sorbitol and panthenol in hair cosmetic compositions as moisturizing agents or humectants. See col. 6, lines 3-6; col. 8, Table III. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to modify the compositions of Argembeaux et al. such that to employ polyols such as glycerin, propylene glycol, polyethylene glycol, sorbitol or panthenol. One having ordinary skill in the art would have been motivated to do this to obtain moisturizing or humectant properties as suggested by Dallal et al. With respect to Claim 25, Argembeaux et al. broadly teach alcohol, but do not explicitly teach the claimed ethanol. However, Dallal et al. teach using ethanol as a carrier or solvent in hair cosmetic compositions. See col. 5, lines 5-6; col. 8, Table II. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to modify the compositions of Argembeaux et al. such that to further employ ethanol. One having ordinary skill in the art would have been motivated to do this to obtain solubilizing effect as suggested by Dallal et al.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Response to Arguments

3. Applicant's arguments with respect to claims 1-28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Mon-Fri from 11am to 7pm.

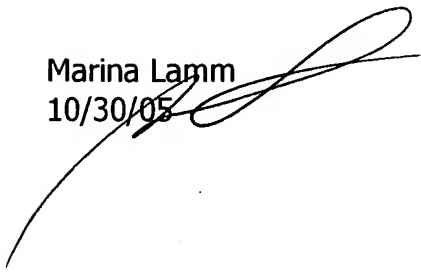
The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

Art Unit: 1616

published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marina Lamm
10/30/05



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER